

June 25, 2020, and August 10, 2020, a hearing was held on September 23, 2020, via ZOOM because of COVID-19 emergency. The record was held open for petitioner to submit additional information. The information was received, and the matter closed on September 24, 2020. On October 27, 2020, ALJ Joan Burke issued an Initial Decision in favor of Respondent, denied the relief sought by Petitioner, and dismissed the petition. The OAL did not receive exceptions to the Initial Decision from either party.

At the hearing Petitioner testified that she rents her home located in Sicklerville, New Jersey where she lives with her ten-year-old son. It is a two-bedroom home and is approximately 1200 square feet in size. Smith uses gas heating for the home and offered her bills from South Jersey Gas to support the assertion that she used more gas than electricity. Smith testified that both utility bills (gas and electric) should not be high at the same time, as it was in this case. (P-2.) The kilowatt usage between the months of November 2018 and February 2019 were significantly higher than the months prior. Smith requested a change of the meter which was done on February 22, 2019. Smith said after the meter was changed the usage went down significantly. Smith is on a budget plan with ACE and argues that her bills for the period between November 2018 through February 2019 were in dispute and should not have been included in the monthly budget calculation. Smith insisted that ACE should have done a "degree day calculation" which she alleged is based on historical usage.

Renee Amber, Senior Regulatory Assessor at ACE, testified on behalf of Respondent. Amber testified that in her current position she is responsible for handling all high priority cases dealing with billing complaints. Based on a request by the Petitioner for a meter accuracy check, the meter was removed and tested for accuracy. Amber identified Smith's electric usage statement provided by ACE from October 2016 through February 2020. (R-2.) Because there was no problem with the meter, Smith was billed for the usage that had occurred. Smith, at the time, was on a twelve-month budget plan and the amount of kWh usage was calculated into her plan. Currently Smith is not on a budget plan because she broke the budget plan when she failed to pay two consecutive months' billing. The May 2020 bill was the last payment made by Smith to her ACE account. The outstanding balance as of September 2020, was \$1,524.25 and of that the disputed amount is \$1,458.28. Amber was asked about a "degree day", which she stated was a unit of measurement. ACE does not perform a degree day calculation, because on every bill the daily temperature average is listed.

Robert Polk, Senior Engineering Tech Specialist also testified on behalf of the Respondent. Polk testified that he has worked for ACE for over thirty-one years and that he is responsible for meter removals and installations. Polk testified that after a meter is removed from the home it is taken to get tested. In testing the meter for accuracy, the technician operates a "tech board". The serial number of the meter gets matched up with an associated data base. The test takes less than one minute. He identified the inspection test results which indicated that the meter in question, equipment # 036204147, was over ninety-nine percent accurate. (R-1.) He explained that the state permits a two percent margin of error. Polk testified that the meter in question was functioning properly. The meter was tested on both a light load and a full load. The average accuracy for both loads was 99.75 percent accuracy. As a result, it was his opinion that the meter was functioning properly and the resultant reading from the meter over the period in question reflects the accurate usage by petitioner.

Finally, Agnes Carpenter, Supervisor of Regulatory Performance at ACE testified on behalf of the Respondent. Carpenter testified that a degree day is a unit of measurement used for heating or

cooling. She said that ACE does not tract a degree day nor are they able to provide it to a customer.

On October 27, 2020, ALJ Burke issued an Initial Decision in favor of Respondent and denied the relief sought by Petitioner. In the Initial Decision, ALJ Burke made specific findings of fact based upon her review of the testimonial and documentary evidence. ALJ Burke found that:

1. The petitioner rents her home located in, Sicklerville, New Jersey. Petitioner has been a customer of ACE since October of 2016. (R-2.)
2. Petitioner filed an appeal disputing the electric usage for the period of November 17, 2018, to February 22, 2019. The electric usage for November 17, 2018 to December 17, 2018, was 3717 kWh; for January 18, 2019, to February 13, 2019, was 2383 kWh. These amounts significantly exceeded averages for the proceeding months and for subsequent months. (P-1.)
3. Respondent removed the old meter on February 22, 2019 and installed a new meter on the same day.
4. Respondent conducted a test on the meter that was removed from the petitioner's home on both a full and light load. The test determined the meter to be ninety-nine percent accurate. (R-1.)
5. The credible evidence presented by ACE at the hearing showed that between November 17, 2018, and December 17, 2018, respondent billed petitioner for electric usage of 3,717 kWh. Between January 17, 2019, and February 14, 2019, petitioner was billed 2,383 kWh. However, between January 17, 2019, and January 22, 2019, petitioner used 129.6 kWh per day and between January 22, 2019, and February 13, 2019, petitioner's usage was down to 78 kWh per day. There was an overall drop in consumption before the meter was exchanged. Petitioner's consumption continued to drop after the meter was exchanged. (R-1.)

ALJ Burke found that Petitioner failed to demonstrate by a preponderance of the evidence that she was improperly charged for electricity service as a result of a faulty meter. The meter # 036204147, which was removed from the Petitioner's home, was tested and registered at ninety-nine percent accuracy for both light and full load. The amount is within two percent margin permitted in accordance with the regulation. Petitioner did not challenge the accuracy of the meter testing nor provide any legally competent evidence to support the claim that the meter was inaccurate. Nor did she present evidence that the kWh usage billed to her for November 17, 2018, through February 22, 2019, was incorrect. Accordingly, ALJ Burke concluded that the meter removed from Petitioner's home and tested on February 22, 2019 and the bills in dispute are accurate.

DISCUSSION AND FINDINGS

In customer billing disputes before the Board, a petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). The burden of proof is met if the evidence establishes the reasonable probability of the facts alleged and generates reliable belief that the tended hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75

(1959). Thus, as ALJ Burke stated, Petitioner was required to show, by a preponderance of the evidence, meter # 036204147 was faulty thereby registering an incorrect amount of kWh usage between November 17, 2018, and February 22, 2019.

In the present instance, Petitioner failed to meet her burden of proof by a preponderance of the evidence. Although Petitioner argued that because there was no change in the household to impact her electricity usage, ACE should have considered historical usage pursuant to N.J.A.C. 14-3.7.6(g) which states:

When the amount of an electric, gas, water or wastewater bill is significantly higher than the customer's established consumption history, and there is no apparent explanation for the increase (for example, severe weather conditions; changes in the make-up or the lifestyles of the members of the household), the customer's established consumption shall be given consideration, in addition to the results of any tests on the customer's meter, in the evaluation of whether the bill is correct and appropriate.

Respondent provided the total history of Petitioner's established consumption from October 2016, to February 2020. There was indeed a spike in kWh between December 2018 and February 2019 in comparison to the previous months and subsequent months. However, Petitioner's established consumption was taken into consideration and compared with the results of the test conducted on the meter.

Pursuant to N.J.A.C. 14:5-4.3(a) "No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment".

Additionally, N.J.A.C. 14:3-4.6(a) states:

Whenever a meter is found to be registering fast by more than two percent or in the case of water meters, more than one- and one-half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided.

The meter # 036204147, which was removed from the Petitioner's home, was tested and registered at ninety-nine percent accuracy for both light and full load. The amount is within two percent margin permitted in accordance with the regulation. Petitioner did not challenge the accuracy of the meter testing nor provide any legally competent evidence to support the claim that the meter was inaccurate. Nor did she present evidence that the kWh usage billed to her for November 17, 2018, through February 22, 2019, was incorrect. Accordingly, ALJ Burke concluded that the meter removed from Petitioner's home and tested on February 22, 2019 and the bills in dispute are accurate.

Thus, after careful review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of law of ALJ Burke to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to meet her burden of proof.

Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the Petition be **DISMISSED**.

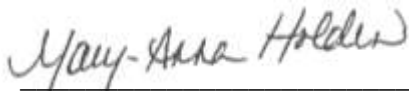
This order shall be effective December 12, 2020.

DATED: December 2, 2020

BOARD OF PUBLIC UTILITIES
BY:




JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER




UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

CHRISTINA SMITH, PETITIONER

V.

ATLANTIC CITY ELECTRIC, RESPONDENT

**BPU DOCKET NO. EC20020144U
OAL DOCKET NO. PUC 04888-20**

SERVICE LIST

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 04888-2020

AGENCY DKT. EC20020144U

CHRISTINA SMITH,

Petitioner,

v.

ATLANTIC CITY ELECTRIC COMPANY,

Respondent.

Christina Smith, petitioner, pro se

Sharil A. Clark, Esq., for respondent Atlantic City Electric Company (Law Office of Sharil A. Clark, attorneys)

Record Closed: September 24, 2020

Decided: October 27, 2020

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

Petitioner, Christina Smith (Smith) filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Atlantic City Electric Company (ACE) for electrical service provided to her home in, Sicklerville, New Jersey, alleging that the meter was faulty and therefore did not record the correct electrical usage.

PROCEDURAL HISTORY

In a letter dated December 16, 2019, Smith filed a petition with the Board of Public Utilities (Board). On March 17, 2020, respondent filed an Answer to the petition and on April 27, 2020, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F-1 to -13. After two telephone conferences, June 25, 2020, and August 10, 2020, a hearing was held on September 23, 2020, via ZOOM because of COVID-19 emergency. The record was held open for petitioner to submit additional information. The information was received, and the matter closed on September 24, 2020.

FACTUAL DISCUSSION AND FINDINGS

TESTIMONY

Smith testified that she rents her home located in Sicklerville, New Jersey where she lives with her ten-year-old son. It is a two-bedroom home and is approximately 1200 square feet in size. Smith uses gas heating for the home and offered her bills from South Jersey Gas to support the assertion that she used more gas than electricity. Smith testified that both utility bills (gas and electric) should not be high at the same time, as it was in this case. (P-2.) The kilowatt usage between the months of November 2018 and February 2019 were significantly higher than the months prior. Smith requested a change of the meter which was done on February 22, 2019. Smith said after the meter was changed the usage went down significantly. Smith is on a budget plan with ACE and argues that her bills for the period between November 2018 through February 2019 were in dispute and should not have been included in the monthly budget calculation. Smith insisted that ACE should have done a “degree day calculation” which she alleged is based on historical usage. Smith did not challenge the accuracy of the meter testing that was done.

Renee Amber (Amber), is a Senior Regulatory Assessor at ACE. In her current position she handles all high priority cases dealing with billing complaints. Based on a request for a meter accuracy check, the meter was removed and tested for accuracy. Amber identified Smith's electric usage statement provided by ACE from October 2016 through February 2020. (R-2.) Because there was no problem with the meter, Smith was billed for the usage that had occurred. Smith, at the time, was on a twelve-month budget plan and the amount of kWh usage was calculated into her plan. Currently Smith is not on a budget plan because she broke the budget plan when she failed to pay two consecutive months' billing. The May 2020 bill was the last payment made by Smith to her ACE account. The outstanding balance as of September 2020, was \$1524.25 and of that the disputed amount is \$1458.28. Amber was asked about a "degree day", which she stated was a unit of measurement. ACE does not perform a degree day calculation, because on every bill the daily temperature average is listed.

Robert Polk (Polk), Senior Engineering Tech Specialist, testified that he has worked for ACE for over thirty-one years and for twenty-two years he has worked as a meter engineer. He is responsible for meter removals and installations. Once a meter is removed from the home it is taken to get tested. In testing the meter for accuracy, the technician operates a "tech board". The serial number of the meter gets matched up with an associated data base. The test takes less than one minute. He identified the inspection test results which indicated that the meter in question, equipment # 036204147, was over ninety-nine percent accurate. (R-1.) He explained that the state permits a two percent margin of error. Polk testified that the meter in question was functioning properly. The meter was tested on both a light load and a full load. The average accuracy for both loads was 99.75 percent accuracy. As a result, it was his opinion that the meter was functioning properly and the resultant reading from the meter over the period in question reflects the accurate usage by petitioner.

Agnes Carpenter (Carpenter), is a Supervisor of Regulatory Performance, at ACE where she has held this position for three years and prior to this position she was a senior assessor overseeing the BPU commission related disputes. Carpenter testified that a

degree day is a unit of measurement used for heating or cooling. She said that ACE does not track a degree day nor are they able to provide it to a customer. Carpenter testified that Smith also obtained home energy assistance through a moderate-income program.

Based upon consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** as **FACT** :

1. The petitioner rents her home located in, Sicklerville, New Jersey. Petitioner has been a customer of ACE since October of 2016. (R-2.)
2. Petitioner filed an appeal disputing the electric usage for the period of November 17, 2018, to February 22, 2019. The electric usage for November 17, 2018 to December 17, 2018, was 3717 kWh; for January 18, 2019, to February 13, 2019, was 2383kWh. These amounts significantly exceeded averages for the preceding months and for subsequent months. (P-1.)
3. Respondent removed the old meter on February 22, 2019 and installed a new meter on the same day.
4. Respondent conducted a test on the meter that was removed from the petitioner's home on both a full and light load. The test determined the meter to be ninety-nine percent accurate. (R-1.)
5. The credible evidence presented by ACE at the hearing showed that between November 17, 2018, and December 17, 2018, respondent billed petitioner for electric usage of 3,717 kWh. Between January 17, 2019, and February 14, 2019, petitioner was billed 2,383 kWh. However, between January 17, 2019, and January 22, 2019, petitioner used 129.6 kWh per day and between January 22, 2019, and February 13, 2019, petitioner's usage was down to 78 kWh per day. There was an overall drop in consumption before the meter was exchanged. Petitioner consumption continued to drop after the meter was exchanged. (R-1.)

LEGAL DISCUSSION AND CONCLUSION

The issue in this matter is whether meter # 036204147 was faulty thereby registering an incorrect amount of kWh usage between November 17, 2018, and February 22, 2019.

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to those matters that are before the OAL. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tendered hypothesis, in all likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied. 31 N.J. 75 (1959).

Petitioner argues that because there was no change in the household to impact her electricity usage, ACE should have considered historical usage pursuant to N.J.A.C. 14-3.7.6(g) which states:

When the amount of an electric, gas, water or wastewater bill is significantly higher than the customer's established consumption history, and there is no apparent explanation for the increase (for example, severe weather conditions; changes in the make-up or the lifestyles of the members of the household), the customer's established consumption shall be given consideration, in addition to the results of any tests on the customer's meter, in the evaluation of whether the bill is correct and appropriate.

Respondent provided the total history of petitioner's established consumption from October 2016, to February 2020. There was indeed a spike in kWh between December 2018 and February 2019 in comparison to the previous months and subsequent months. However, petitioner's established consumption was taken into consideration and compared with the results of the test conducted on the meter.

Pursuant to N.J.A.C. 14:5-4.3(a) “No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment”. Additionally, N.J.A.C. 14:3-4.6(a) states:

Whenever a meter is found to be registering fast by more than two percent or in the case of water meters, more than one- and one-half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided.

The meter, which was removed from the petitioner’s home, was tested and registered at ninety-nine percent accuracy for both light and full load. The amount is within two percent margin permitted in accordance with the regulation. Petitioner did not provide any legally competent evidence to support the claim that the meter was inaccurate. Nor did she present evidence that the kWh usage billed to her for November 17, 2018, through February 22, 2019, was incorrect.

I therefore **CONCLUDE** that the meter that was removed from petitioner’s home on February 22, 2019, was accurate, as were the bills in dispute.

ORDER

I hereby **ORDER** that all relief sought by petitioner is **DENIED**. Petitioner’s appeal is **DISMISSED**.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

APPENDIX

WITNESSES

For Petitioner:

Christina Smith

For Respondent:

Agnes Carpenter, Supervisor Regulatory Performance, Atlantic City Electric Company

Renee Amber, Senior Regulatory Assessor, Atlantic City Electric Company

Robert Polk, Senior Engineering Tech Specialist, Atlantic City Electric Company

EXHIBITS

For Petitioner:

- P-1 South Jersey Gas Bills
- P-2 Payment History
- P-3 Atlantic City Electric Bills
- P-4 Complaint

For Respondent:

- R-1 AMI Device Management
- R-2 Usage Statement - October 2016 to February 2020
- R-3 Regulation
- R-4 Regulation